

# La Plata Police Department – General Order

	Title: <b>Extreme Risk Protective Order</b>		Order #: <b>662</b>	
	Effective Date: October 1, 2018	Review Date:		
	<input checked="" type="radio"/> New	<input type="radio"/> Amends	<input type="radio"/> Rescinds	
Approved by: <b>Chief Carl Schinner</b>			CALEA 6 <sup>th</sup> Edition	
CALEA Standard:			Pages: 1	

1. Purpose: Extreme Risk Protective Orders (ERPO) are meant to prohibit a respondent from possessing a firearm where there is sufficient information to believe the respondent poses an **immediate and present danger** of causing personal injury to the respondent, the petitioner, or other individuals by possessing a firearm. The purpose of the ERPO is to reduce gun deaths and injuries by restricting a respondent’s access to firearms and ammunition.

A petition for or the issuance of the ERPO does not in any way affect the ability of law enforcement to remove or seize firearms and/or ammunition from any person or property as permitted by any other law.

2. Definitions:

- a. Extreme Risk Protective Order (ERPO): A civil interim, temporary, or final protective order prohibiting the respondent from possessing and purchasing a firearm and ammunition and order the responded to surrender to law enforcement any firearm and ammunition in the respondent’s possession for the duration of the order.
- b. Ammunition: A cartridge, shell, or any other device containing explosive or incendiary material designed and intended for use in a firearm. <sup>1</sup>
- c. Firearm: A weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of explosive; or the frame or receiver of such a weapon. Firearm includes a handgun, rifle, shotgun and starter gun. <sup>2</sup>
- d. Petitioner: An individual who files a petition for an interim, temporary, or final ERPO. A petitioner may be any one of the following:
  - i. Physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage or family therapist, or designee of a health officer who has examined the individual;

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<sup>1</sup> Annotated Code of Maryland, Public Safety Article, §5-133.1(a)

<sup>2</sup> Annotated Code of Maryland, Public Safety Article, §5-101(h) (1 & 2)

# La Plata Police Department – General Order

- ii. Law enforcement officer;
  - iii. Spouse of the respondent;
  - iv. A cohabitant of the respondent;
  - v. Person related to the respondent by blood, marriage, or adoption;
  - vi. An individual who has a child in common with the respondent;
  - vii. A current dating or intimate partner of the respondent; or,
  - viii. A current or former legal guardian of the respondent.
- e. Respondent: A person against whom a petition for an ERPO is filed.
- f. Possessing a Firearm and Ammunition: Where the respondent has firearms and/or ammunition within his/her control, this includes those firearms and ammunition where the respondent has access to or in within his/her easy reach. Possession also includes firearms and ammunition in other locations inside and outside of the respondent's residence and where the respondent may not be the owner of the property but circumstances show that the respondent has reasonable control or possessory interest over the firearms and/or ammunition. <sup>3</sup>
- g. Petition for Emergency Evaluation: Where the officer has personally observed an individual or the individual's behavior, and the officer has reason to believe the individual has a mental disorder and presents a danger to the life or safety of the individual or others, the officer may file a petition with the treating facility for an emergency evaluation. <sup>4</sup>
- h. Interim ERPO: When the District Court is closed, the petitioner can file a petition with the court commissioner for an order and the court commissioner can issue the order. The Interim ERPO Order requires the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and prohibits the respondent from purchasing or possessing any firearm or ammunition for the duration of the interim order. An Interim ERPO may include referral for the commissioner to law enforcement for a determination of whether the respondent should be taken for an emergency mental evaluation. An Interim ERPO shall be effective until the earlier of the Temporary ERPO hearing or the end of the

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<sup>3</sup> Firearms Surrender Task Force: Law Enforcement Instructional Guide, Failure to Surrender Firearms-Final Protective Order (2004)

<sup>4</sup> Annotated Code of Maryland, Health General Article, §10-622

# La Plata Police Department – General Order

second business day the office of the District Court clerk is open following the issuance of the Interterm ERPO.

- i. Temporary ERPO: When the District Court is open, a petitioner can file a petition with the District Court for the issuance of an ERPO. A hearing will be held and if the Temporary ERPO is issued by a District Court judge, it requires the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and prohibits the respondent from purchasing or possessing any firearm or ammunition for the duration of the Temporary Order. A Temporary ERPO may include a referral from the District Court judge for an emergency mental evaluation of the respondent. A Temporary ERPO shall be effective for not more than seven (7) days after service of the Order unless extended by the judge or in the event the order expires when the court is closed the Order shall be effective until the second day on which the court is open.
- j. Final ERPO: After a hearing on a petition for the issuance of a Final ERPO, an Order may be issued by a District Court judge requiring the respondent to surrender to law enforcement authorities any firearms and ammunition in the respondent's possession; and prohibits the respondent from purchasing or possessing any firearm or ammunition for the duration of the Order. A Final ERPO shall be valid for a period stated in the Order not to exceed one year unless superseded by a Circuit Court judge's order or the Order is modified, rescinded, or for good cause shown, extended for six months beyond the period specified.
- k. Reasonable Grounds: Where there is a preponderance of the evidence to support the belief that the respondent poses an **immediate and present danger** of causing personal injury to the respondent, the petitioner, or another individual by possessing a firearm. Reasonable grounds are akin to probable cause. The determination of whether probable cause exists requires a nontechnical, common senses evaluation of the totality of the circumstances in a given situation. Probable cause exists where the facts and circumstances, taken as a whole, would lead a reasonably cautious person to believe that the respondent poses an **immediate and present danger** of causing personal injury to himself, the petitioner, or another individual by possessing a firearm. <sup>5</sup>

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<sup>5</sup> Maryland Judge's Domestic Violence Resource Manual – October 2017  
See Reisterstown Lumber Co. v. Royer, 91 Md. App. 746 (1992)

# La Plata Police Department – General Order

- i. Factors used by the Court or Commissioner in determining whether the issuance of an ERPO is appropriate:
    1. Any information to the petitioner that the respondent poses an **immediate and present danger** of causing personal injury to the respondent, the petitioner, or another person by possessing a firearm and any specific facts in support of this information;
    2. The petitioner’s basis of knowledge of supporting facts, including a description of the behavior, statements of the respondent, or any other information that led the petitioner to believe that the respondent presents an **immediate and present danger** of causing personal injury to the respondent or another person;
    3. A description of the number, types, and location of any known firearms believed to be possessed by the respondent;
    4. Any supporting documents or information regarding:
      - a. Any unlawful, reckless, or negligent use, display, storage, possession, or brandishing of a firearm by the respondent;
      - b. Any act or threat of violence the respondent made against the petitioner or against another person, whether or not the threat of violence involved a firearm;
      - c. Any violation by the respondent of a protective order under Title 4, Subtitle 5 of the Family Law Article;
      - d. Any violation by the respondent of a peace order under Title 3, subtitle 15 of the Courts Article;
      - e. Any abuse of a controlled dangerous substance or alcohol by the respondent including any conviction for a criminal offense involving controlled dangerous substances or alcohol; and,
      - f. Where disclosure is permitted or not otherwise prohibited by law, any health record or health information concerning the respondent.
3. Law Enforcement Response:
    - a. Emergency Evaluations:

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## La Plata Police Department – General Order

Where an officer files a petition of an emergency evaluation and the officer has reasonable grounds to believe that the evaluatee poses an immediate and present danger of causing personal injury to himself or other person by possessing a firearm, the officer should, in most cases, also file a petition for an ERPO.

b. Domestic or Other Types of Calls for Police Assistance:

Where an officer is on a scene and the officer personally observes behavior that would lead the officer to conclude that he has **reasonable grounds** that an individual poses an **immediate and present danger** of causing personal injury to himself/herself or to other persons by possession a firearm, the officer should, in most cases, file a petition for an ERPO.

Where an officer is on the scene but does not personally observe behavior that an individual poses an immediate and present danger of causing personal injury to himself/herself or to other persons by possessing a firearm, however, the officer receives information meeting the criteria stated above, the officer shall immediately make a determination whether the complainant/witness/victim meets the legal criteria to petition the court for the issuance of the ERPO. In those cases, where the complainant/witness/victim is an eligible person for relief, the on-scene officer shall explain to the complainant/witness/victim what an ERPO is and the process to obtain the Interim or Temporary Order as is appropriate. In these situations, the officer is the best position to obtain the ERPO since the complainant/witness/victim has the necessary background information regarding the respondent's behavior and the specific facts that may be needed to justify the issuance of an Order.

For this reason, the officer shall provide the complainant/witness/victim with the ERPO information pamphlet which explains the process for filing the petition. The officer shall then determine if the complainant/witness/victim intends to file a petition for an ERPO. In those instances, where the complainant/witness/victim indicates that they will be pursuing an ERPO, the officer shall document this fact. **It is however, always in the officer's discretion to file the petition, even in cases where the complainant/witness/victim meets the criteria to file the ERPO petition. If the complainant/witness/victim indicates that they will not be pursuing an ERPO, the officer should determine whether it is appropriate for the officer to file the petition.**

In cases where the officer does not personally observe the behavior of the individual and the complainant/witness/victim is not a person eligible to file the petition, the officer should determine whether it is appropriate for the officer to file the petition.

# La Plata Police Department – General Order

- c. Officers who are investigating cases where the issuance of an ERPO may be appropriate should make a good faith effort to legally secure firearms and ammunition in the respondent's possession during the original call for service. This action should result in an effort to eliminate the potential harm and the need to secure the weapons and ammunition at a later time should an ERPO be issued. In the event where the ERPO is not issued or the petition is subsequently dismissed, the firearms and ammunition can be returned to the lawful owner if the individual is not barred from possession the firearms and ammunition by the State or Federal law.

## 4. Service of ERPO Orders:

### a. Interim Orders:

- i. On receipt of an Interim Order officers shall initiate a computer check to determine whether the respondent is the registered owner of a **regulated** firearm;
- ii. Immediately on receipt of an Interim Order officers shall attempt to serve the order on the respondent;
- iii. Officers shall make a good faith effort to secure any firearm(s) and/or ammunition in the respondent's possession;
- iv. A court commissioner may make a finding, based upon the information contained within the petition, that there is probable cause to believe the respondent meets the requirement for an emergency evaluation under Title 10, Subsection 6 of the Health General Article. In such case, the commissioner shall make a referral to law enforcement on the Interim Order. A referral on the Interim Order does not provide law enforcement the legal authority to take the respondent into custody for an evaluation. The referral and any subsequent request for emergency evaluation must follow the procedures as set forth in the General Health Article. <sup>6</sup>
- v. Officer shall make a return of service to the Clerk of the Court; and,
- vi. Within two hours after service of the Order, officers shall electronically notify the Department of Public Safety and Correctional Services of the service using an electronic system approved and provided by the Department of Public Safety and Correctional Services.

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<sup>6</sup> The petition for emergency evaluation of an individual may be made by: A peace officer who personally has observed the individual or the individual's behavior. Health General Article §10-622 (b) (ii).

# La Plata Police Department – General Order

## b. Temporary Orders:

- i. On receipt of a Temporary Order officers shall initiate a computer check to determine whether the respondent is the registered owner of a **regulated** firearm;
- ii. Immediately on receipt of a Temporary Order officers shall attempt to service the order on the respondent;
- iii. A judge may make a finding, based upon information provided, that there is probable cause to believe the respondent meets the requirement of an emergency evaluation under Title 10, Subtitle 6 of the Health General Article. In such cases, the judge shall refer the respondent for an emergency evaluation. A referral on the ERPO does not provide law enforcement the legal authority to take the respondent into custody for an emergency evolution unless accompanied by a separate court order issued by the judge. If the ERPO has the accompanying order for an emergency evolution, along with serving the ERPO, officers shall take the respondent into custody for the court ordered emergency evaluation.<sup>7</sup>
- iv. Officers shall make a return of service to the Clerk of the Court; and,
- v. Within two hours after service of the Order, officers shall electronically notify the Department of Public Safety and Correctional Services of the service using an electronic system approved and provided by the Department of Public Safety and Correctional Services.

## c. Final Orders:

- i. On receipt of the law enforcement copy of a Final Order, officers shall update the computerized record of the Order.
- ii. A judge may make a finding, based upon the information provided, that there is probable cause to believe the respondent meets the requirement for an emergency evaluation under Title 10, Subtitle 6 of the Health General Article. In such cases, the judge shall refer the respondent for an emergency evaluation.

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<sup>7</sup> See Health Article, §10-623.

# La Plata Police Department – General Order

A referral on the ERPO does not provide law enforcement the legal authority to take the respondent into custody for an emergency evaluation unless accompanied by a separate court order issued by the judge. If the ERPO has the accompanying order for an emergency evaluation, along with serving the ERPO, officers shall take the respondent into custody for the court ordered emergency evaluation.

## 5. Obtaining Firearms and Ammunition in the Possession of the Respondent:

Upon serving an Interim or Temporary ERPO officers shall make a good faith effort to secure all firearms and ammunition in the possession of the respondent. There may be occasions where the respondent has been served with an order in court and law enforcement will be subsequently notified by receipt of a copy of said order. In such cases, upon receipt of the copy of the order, officers shall then make a good faith effort to secure all firearms and ammunitions in the possession of the respondent.

- a. Consent Search: Although every situation is different, when an ERPO has been issued, officers may subsequently develop information that firearms and/or ammunition are in possession of the respondent, the petitioner, or other individuals. In this case, the petitioner or other individual may have the legal authority to give consent to the officers and allow officers access into the home or other locations to secure any firearms and/or ammunition. The respondent may also have legal authority to give officers consent to search the home or other location.
- b. Search Warrant: Officers, during their investigations, may develop probable cause to apply to the court for an order to search a specific location or locations in situations where the respondent has failed to surrender firearms and/or ammunition.
- c. Where officers have probable cause to believe that the respondent is in possession of firearms and/or ammunition and after giving proper notice, the respondent refuses to surrender the firearms and/or ammunition, officers shall arrest the respondent for violating the ERPO.

## 6. Law Enforcement Responsibility Upon Taking Possession of Firearms and/or Ammunition:

Officers or other agency personnel coming into possession of firearms and/or ammunition in accordance with an ERPO shall at time of surrender or seizure:

- a. Issue a receipt to the respondent identifying the make, model, and serial number of all firearms and ammunition seized or surrendered as a result of an ERPO;
- b. Retain a copy of the receipt for the agency's records;

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## **La Plata Police Department – General Order**

- c. Provide information to the respondent on the process for retaking possession of the firearms and/or ammunition on the expiration or termination of the order; and,
- d. Transport and store any firearms (in a protective case if available) or ammunition surrendered or seized in accordance with the ERPO. Storage of the firearms shall be in a manner intended to prevent damage to the firearms while the order is in effect and officers or other personnel shall not place any mark on the firearm for identification or other purposes.

### 7. Court Attendance:

Officers who apply for Interim, Temporary, or Final ERPO will be required to attend the court proceeding(s). Where the officer is the petitioner in a Temporary ERPO hearing, the officer may have to contact witnesses prior to the scheduled hearing and request they attend (NOTE: Time constraints may not allow sufficient time to subpoena witnesses). If a Temporary ERPO is issued, the officer or agency should make reasonable efforts to assure that witnesses in the final hearing are subpoenaed.

### 8. Law Enforcement Responsibility Upon Expiration of ERPO:

- a. Upon expiration or termination of an ERPO, the agency shall:
  - i. Notify the respondent that the respondent may request the return of the firearms and/or ammunition;
  - ii. Before releasing firearms and/or ammunition the respondent, verify that the respondent is not otherwise prohibited from possessing firearms and/or ammunition.
  - iii. On request of the respondent who is not otherwise prohibited from possessing firearms and/or ammunition, the agency shall return the firearms and/or ammunition to the respondent no later than:
    - 1. 14 days after the expiration of an Interim or Temporary Order;
    - 2. 14 days after the court terminates a Final Order; or,
    - 3. 48 hours after the expiration of the Final Order.
  - iv. A respondent who does not wish to recover firearms and/or ammunition or who is otherwise prohibited from possessing firearms and/or ammunition may sell or transfer the firearms and/or ammunition to:

# La Plata Police Department – General Order

1. A Federal Firearms Licensed Dealer (the FFL must provide written proof that the respondent has agreed to transfer the firearms and/or ammunition to the dealer and this agreement must be verified with the respondent and the verification documented in writing):
  2. Another person who is not prohibited from possessing the firearms and/or ammunition under State and/or Federal Law and who does not reside in the same residence as the respondent (the person must provide written proof that the respondent has agreed to transfer the firearms and/or ammunition to the person and the agreement must be verified with the respondent and the verification documented in writing); or,
  3. Request the agency destroy the firearms and/or ammunition.
- v. If an individual other than respondent claims ownership of a firearm and/or ammunition surrendered or seized as a result of an ERPO, the agency shall only release the firearm and/or ammunition to the individual if:
1. The individual provides proof of ownership of the firearm and/or ammunition; and,
  2. The agency determines the individual is not otherwise prohibited from possessing the firearm and/or ammunition.
- vi. In the event a firearm and/or ammunition is not reclaimed within six months after the notice to a respondent as required in Paragraph 7(c), no party shall have the right to assert ownership of the firearm or ammunition and the agency may destroy the firearm and/or the ammunition.
9. Violations of an ERPO:

Officers shall arrest with or without an arrest warrant any person whom the officer has probable cause to believe is in violation of an Interim, Temporary, or Final ERPO in effect at the time of the violation.